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HOUSE RESEARCH ORGANIZATION

daily floor report

Thursday, May 14, 2015
84th Legislature, Number 70
The House convenes at 9 a.m.
Part One

Two bills are on the Major State Calendar for second-reading consideration today. Two joint resolutions are on the Constitutional Amendments Calendar for second-reading consideration today. The bills and joint resolutions are listed on the following page.

Today is the final day under the House Rules that the House may consider on second reading House bills or House joint resolutions listed on a daily or supplemental House calendar.



Alma Allen
Chairman
84(R) - 70

HOUSE RESEARCH ORGANIZATION

Daily Floor Report

Thursday, May 14, 2015

84th Legislature, Number 70

Part 1

HB 2433 by Burkett	Continuing the Department of Family and Protective Services	1
HB 1759 by Aycock	Revising school finance formulas	9
HJR 77 by Miller	An Article 5 convention for amendments to limit the federal government	16
HJR 26 by Martinez Fischer	Proposing a constitutional amendment to increase the minimum wage	20

SUBJECT: Continuing the Department of Family and Protective Services

COMMITTEE: Human Services — committee substitute recommended

VOTE: 8 ayes — Raymond, Rose, Keough, S. King, Klick, Naishtat, Peña, Spitzer
0 nays
1 absent — Price

WITNESSES: For — (*Registered, but did not testify*: Katherine Barillas, One Voice Texas; Ashley Harris, Texans Care for Children)

Against — Judy Powell, Parent Guidance Center

On — (*Registered, but did not testify*: Audrey Carmical and John Specia, Department of Family and Protective Services; Kyle Janek, Health and Human Services Commission; Amy Tripp, Sunset Advisory Commission)

BACKGROUND: **Department overview.** The Department of Family and Protective Services (DFPS) exists to protect children, adults 65 years of age or older, and individuals with disabilities. It was created in 2003 as part of a consolidation of health and human services agencies. The department's functions were drawn from the former Department of Protective and Regulatory Services.

A commissioner appointed by the executive commissioner of the Health and Human Services Commission oversees operations of DFPS. The HHSC executive commissioner and the DFPS commissioner develop rules and policies for the department with input from an advisory council appointed by the governor.

DFPS investigates allegations of abuse or neglect of children or vulnerable adults, places abused or neglected children in alternative living arrangements while seeking to address their long-term needs, and provides other services to help prevent abuse and neglect in these populations. In

addition, the agency regulates child-care centers and residential child-care facilities to ensure that minimum standards for health and safety are met.

In fiscal 2013, the agency received nearly 229,334 reports of alleged child abuse or neglect, according to the Sunset Advisory Commission. In the same year, the agency received 98,920 allegations of abuse, neglect, or exploitation of elderly or disabled individuals. Staff also conducted 37,128 day-care inspections and completed 18,429 investigations in fiscal 2013.

Budget and staffing. In fiscal 2013, the agency spent \$1.37 billion, a little more than half of which was provided through federal funding streams. General revenue contributed 47 percent or \$645 million toward the agency's spending. At the end of the fiscal 2013, the department employed 10,650 staff and was authorized to fill 11,175 FTEs.

Child Protective Services (CPS) is the largest division within the agency, employing 7,759 of the department's filled positions and spending about 85 percent of its funds. The Adult Protective Services and Child Care Licensing divisions employed 958 and 509 staff, respectively, at the end of 2013. DFPS also operates a Prevention and Early Intervention program by contracting with local providers to deliver services in communities. The 83rd Legislature added 1,175 positions to the department's staffing for fiscal 2014-15. Most of these were CPS caseworkers, but 41 positions were added to support investigations of illegal child care operations.

DIGEST: CSHB 2433 would continue the Department of Family and Protective Services (DFPS) until September 1, 2027.

The bill would make various changes to Family Code, ch. 263, which governs the review of placement of children under the care of DFPS, and ch. 264, which governs child welfare services. The bill also would make changes to other sections of the Family Code, including those governing adoption, investigations of child abuse or neglect reports, prevention and early intervention services, and educational services for children in foster care.

The bill would change procedural elements associated with the agency's

assuming and managing conservatorship of children who were separated from their parents because of suspected or proven abuse or neglect. Some changes would change measures designed to protect children who were in the care of the state. For example, the bill would require shorter timelines for the completion of home studies and background checks in certain situations.

Notifications. CSHB 2433 would make several changes to the notification procedures for parents and others involved with a child in managing conservatorship of DFPS, including requirements that the department:

- make a reasonable effort to notify a child's parent within 24 hours if there was a significant change in the medical condition of the child, if the child was enrolled or participating in a drug research program, or if the child received an initial prescription of psychotropic medication;
- notify a child's parent or parent's attorney, as well as other concerned parties, within 48 hours before a change to a child's residential child care facility; and
- notify a child's parent or parent's attorney as well as other concerned parties as soon as possible but not later than 10 days after the department became aware of a significant event affecting a child in the conservatorship of the department.

Information for prospective adoptive parents. The bill would provide for changes to the type of information shared with prospective adoptive parents and the manner in which the information would be shared. The bill would:

- allow the department to modify the form and contents of the health, social, educational, and genetic history report for a child based on factors specified by the department; and
- require the department to provide a child's case record upon request to prospective adoptive parents who had reviewed the history report and indicated a desire to proceed with the adoption

Reporting requirements. CSHB 2433 would specify certain reporting

requirements for the department, including a report of statistics by county that related to key performance measures and data elements for child protection. This annual report would have to be made publicly available and would include information on the number of child abuse and neglect reports, the number of child deaths from abuse and neglect in the state, the number of children in managing state conservatorship at the time of their death, and the timeliness and the achievement of certain programmatic goals. The bill also would require the department to conduct an annual process to seek and evaluate public input on the usefulness of reporting requirements and any proposed changes.

Changes to Education Code. CSHB 2433 would make several changes to the Education Code. For example, the bill would:

- provide for additional continuity related to a child's attendance at a school regardless of certain other changes in the child's conservatorship status;
- provide additional reasons for an excused absence from school for a child in conservatorship, including allowing an absence for an activity required under the child's service plan; and
- remove a prohibition on allowing tuition benefits for children who had exited DFPS conservatorship and were returned to their parents in certain situations.

New planning requirements. CSHB 2433 would require DFPS to improve its planning in three major areas.

Child Protective Services plan. The bill would require that DFPS develop and implement an annual business plan for the Child Protective Services program, which would include long-term and short-term performance goals, identification of priority projects, a statement of staff expectations identifying responsible persons or teams, tasks and deliverables expected, resources needed to accomplish each project, a time frame for the completion of each deliverable and project, and the expected outcome for each project. By October 1 each year, the annual business plan would be submitted to the governor, lieutenant governor, speaker of the House, and chairs of the standing committees of the House and Senate with primary jurisdiction over child protection issues.

Prevention and early intervention services plan. The bill would require that DFPS develop and implement a five-year strategic plan for its prevention and early intervention services program. The plan would identify methods to leverage other sources of funding or provide support for existing community-based prevention efforts and would include a needs assessment that identified programs to best target the needs of the highest-risk populations and geographic areas. It also would have to identify the goals and priorities for the department's overall prevention efforts, identify methods to collaborate with other state agencies on prevention efforts, and identify specific strategies to implement the plan and to develop measures for reporting on the overall progress toward the plan's goals. The plan would be required to be posted on its website.

Foster care redesign plan. The bill would require that the agency develop and maintain a plan for implementing its foster care redesign initiative. The plan would have to include:

- a description of the department's expectations, goals, and approach to implementing foster care redesign;
- a timeline for implementing foster care redesign throughout the state, any limitations related to the implementation, and a contingency plan to provide continuity of foster care services delivery if a contract with a single source continuum contractor ended prematurely;
- delineation and definition of the case management roles and responsibilities of the department and the department's contractors and the duties, employees, and related funding that would be transferred to the contractor by the department, along with identification of training needs;
- a plan for evaluating the costs and tasks associated with each contract procurement, including the initial and ongoing contract costs for the department and contractor;
- the department's contract monitoring approach and a plan for evaluating the performance of each contractor and the foster care redesign system as a whole that would include an independent evaluation of processes and outcomes; and
- a report on transition issues resulting from implementation of the

foster care redesign.

DFPS would update the implementation plan and post the updated plan on its website annually.

Changes to child care licensing. CSHB 2433 would authorize more discretion in assessing administrative penalties for high-risk child care license violations. The bill also would direct the agency to develop, adopt, and publicize an enforcement policy that would delineate how the department determined appropriate disciplinary action for violations. The bill also would provide more flexibility to the agency in setting fees associated with child care licensing and would provide for the creation of a license and registration renewal process.

Sunset provision and effective date. Unless continued in existence as provided by the Texas Sunset Act, the department would be abolished on September 1, 2027. This provision would take effect only if HB 2304 by Price, SB 200 by Nelson, or similar legislation under consideration by the 84th Legislature did not become law. If HB 2304, SB 200, or similar legislation became law and provided for the continuation of the department, this provision would have no effect.

With the exception of certain executive commissioner rules related to licensing, certification, and registration renewals, the bill would take effect September 1, 2015.

**SUPPORTERS
SAY:**

CSHB 2433 reflects the best efforts of many people to make essential changes to the Department of Family and Protective Services (DFPS) that would improve the lives of children in foster care, better protect children cared for in licensed or other regulated child care facilities, and improve the strategic planning of the agency. The bill also would reduce administrative burdens on DFPS caseworkers, which would assist them in doing their jobs more effectively and, allow them to spend more time with children and families, with the goal of reducing turnover. The bill would represent a substantial step forward in improving outcomes for the state's most vulnerable populations.

In its recent reports, the Sunset Advisory Commission characterized the

DFPS as an agency frequently responding to crisis and criticism. The commission identified turnover of caseworkers, who are in a difficult and highly stressful work environment, as one of the biggest challenges the agency faces. Therefore, reducing unnecessary work for caseworkers became a core part of responding to the Sunset commission's findings. A key recommendation in the February 2015 Sunset report was to eliminate, clarify, and streamline burdensome and prescriptive statutory requirements. CSHB 2433 is a reflection of the items that emerged from the process of determining which changes should be made through legislation and which should be made through other means.

Stakeholders have worked extensively on the bill to ensure it reflects the relevant recommendations made by the Sunset Advisory Commission and that it would balance the needs of the agency, the rights of parents, and the safety and well-being of children. The findings of an operational review conducted by the Stephen Group, input from DFPS, and the recommendations of a workgroup appointed by Sen. Jane Nelson were considered along with the Sunset Advisory Commission's findings and recommendations in formulating the bill.

The notification requirements of the bill appropriately would allow communication to parents via an attorney. While it is the standard practice of DFPS to notify parents, sometimes they prefer to receive communication through an attorney. The fact that attorneys have an ethical obligation to notify their clients creates an assurance that parents always would be notified appropriately. Requiring the department always to notify parents, regardless of the situation at hand, would be overly rigid and would place a burden back on the caseworkers who would have to provide the notification.

CSHB 2433 would allow DFPS to retain some discretion regarding which information to release to prospective adoptive parents, including the ability to modify the form they are required to use. The bill would require the agency to provide the child's case record if prospective adoptive parents requested it after receiving other information. This would be a sufficient and balanced approach.

The bill would require DFPS to report broad categories of data while not

being overly prescriptive. This would be consistent with one intention of the bill — to eliminate specific measures in statute and give DFPS greater flexibility. The bill also would require DFPS to conduct a process each year to allow for stakeholder input on the measures DFPS should report. Stakeholders would have the opportunity to participate in the process required by the bill and advocate for any new measures they thought were important.

**OPPONENTS
SAY:**

While CSHB 2433 reflects effort and progress in improving the quality of services for children in foster care or who are otherwise affected by DFPS' work, there are some specific improvements that the bill would not address.

The bill includes a provision that would give DFPS the option to notify a parent or attorney in certain situations, but a parent always should be notified. By not clearly stating that a parent would have to be notified in the case of a significant event, the bill would create circumstances in which notification did not happen. This would be unfair to the parent and not good for the child.

DFPS should not have discretion regarding which information to release to prospective adoptive parents or the ability to modify the form they are required to use. Prospective adoptive parents need full access to certain information that can be critical in their decision to go forward with an adoption.

New reporting requirements in the bill should include reporting on the number of pregnant and parenting youth in foster care and the number who have been missing and have been victims of trafficking while in foster care. These are significant problems that are well known to be prevalent among foster youth, and they need to be tracked.

NOTES:

The Legislative Budget Board estimates CSHB 2433 would have a negative net impact of \$1.4 million to general revenue through fiscal 2016-17.

SUBJECT: Revising school finance formulas

COMMITTEE: Public Education — committee substitute recommended

VOTE: 7 ayes — Aycock, Allen, Deshotel, Galindo, Huberty, K. King,
VanDeaver

0 nays

4 absent — Bohac, Dutton, Farney, González

WITNESSES: For — Julie Cowan, Austin ISD Trustee; James Schiele, Eagle Mountain -
Saginaw ISD; Drew Scheberle, Greater Austin Chamber of Commerce;
Rhonda Skillern Jones, Houston ISD; Barry Haenisch, Texas Association
of Community Schools; Amy Beneski, Texas Association of School
Administrators; David Dunn, Texas Charter Schools Association; Jennifer
Bergland, Texas Computer Education Association; Mike Baldree, Texas
Rural Education Association; Nicole Conley, Texas School Alliance; Dale
Craymer, Texas Taxpayers and Research Association; Dominic
Giarratani, Texas Association of School Boards; (*Registered, but did not
testify*: David Anderson, Arlington ISD Board of Trustees; Amber Elenz,
Austin and Ann Teich, Austin ISD; Gina Hinojosa, Austin School Board;
MaryAnn Whiteker, Hudson ISD; Howell Wright, Huntsville ISD; Matt
Dossey, Jonesboro ISD; Edward Hicks IV and Cyndi Matthews, Texas
Counseling Association; Mark Terry, Texas Elementary Principals and
Supervisors Association; and 34 individuals)

Against — Chandra Villanueva, Center for Public Policy Priorities; Celina
Moreno, MALDEF; Samuel Guzman, Mexican American School Board
Members Association; Jesse Romero, Texas Association for Bilingual
Education; Joe Cardenas III, Texas Hispanics Organized for Political
Education; Yannis Banks, Texas NAACP; (*Registered, but did not testify*:
Placido Salazar, Dr Hector P Garcia American GI Forum; C. LeRoy
Cavazos, San Antonio Hispanic Chamber of Commerce; Pauline Anton,
Texas Association of Mexican American Chambers of Commerce;
Michael Barba, Texas Public Policy Foundation; Joe Cardenas, Texas
Latino Education Coalition)

On — Barney McClure, Agriculture Teachers Association; HD Chambers, Alief ISD; Dr. James Terry, Dallas ISD; Wayne Pierce, Equity Center; Jeff Harvey, Fayetteville ISD; Paul Clore, Gregory-Portland ISD; David Hinojosa, IDRA; Lynn Moak, Moak, Casey & Associates; Mike Motheral, Small Rural School Finance Coalition; Randy Meyer, Sweet Home ISD; Ted Melina Raab, Texas American Federation of Teachers; Jodi Duron, Texas Association of Mid-sized Schools; Karen Rue, Texas School Coalition; Bill Grusendorf, Texas Association of Rural Schools; Daniel Casey; Paul Colbert; Lori Taylor; (*Registered, but did not testify*: Wanda Bamberg, Aldine ISD; Charles Luke, Coalition for Education Funding; Andy MacLaurin, Janet Spurgin, Aaron Henricksen, and John Mcgeady, Legislative Budget Board; Von Byer and Lisa Dawn-Fisher, Texas Education Agency)

BACKGROUND: The Texas school finance system has evolved through legislative responses to a series of legal challenges by school districts and taxpayers.

In 1993, the 73rd Legislature responded to a series of *Edgewood* school finance rulings by enacting SB 7 by Ratliff. The bill created a system that guarantees all districts a certain revenue base and essentially shifts money from districts with high property wealth per student to property-poor districts to equalize educational funding.

In response to a subsequent lawsuit known as *West Orange-Cove*, the Legislature in 2006 enacted HB 1 by Chisum, which required districts to lower their maintenance and operations (M&O) tax rates by one-third. The resulting compressed tax rate is a factor in determining a district's share of Tier 1, or regular program, funding. The bill provided a method for districts to raise additional revenue for Tier 2, or local enrichment. Certain additional pennies — known as “copper” pennies — are guaranteed to yield \$31.95 per penny per weighted student. HB 1 also created a “hold harmless” mechanism to guarantee that districts would not lose revenue as a result of the compressed tax rate. Known as additional state aid for tax reduction, or target revenue, the mechanism is statutorily scheduled to expire September 1, 2017.

In 2011 four groups of school districts initiated another round of school finance litigation that came to be known as *The Texas Taxpayer & Student*

Fairness Coalition, et al. v. Williams, et al. In August 2014, a Travis County district judge ruled that the system violates Texas constitutional requirements for adequate and equitable funding and a prohibition on a statewide property tax. The state is appealing the ruling to the Texas Supreme Court.

DIGEST: CSHB 1759 would revise formulas used to determine school district and charter school entitlement under the Foundation School Program (FSP). It would repeal certain school funding provisions, including the cost-of-education adjustments, the transportation allotment, the high school allotment, and additional state aid for staff salaries.

Cost-of-education adjustment. The bill would remove a requirement that the basic allotment per student include a cost of education adjustment to reflect variations in education costs beyond the control of districts.

Transportation allotment. The bill would repeal the allotment for districts providing transportation to students who reside two or more miles from their regular campus. The transportation allotment would be retained for The Texas School for the Deaf.

High school allotment. The bill would repeal districts' entitlement to an annual allotment of \$275 for each student in average daily attendance in grades 9-12.

Additional state aid for staff salary increases. The bill would repeal districts' entitlement to \$500 multiplied by the number of full-time non-professional employees and \$250 multiplied by the number of part-time district employees, other than administrators.

Fractional funding. Under current law, districts with compressed rates below \$1.00 receive proportionally less funding than districts with compressed rates at \$1.00. The bill would provide a mechanism to enable districts with compressed tax rates that are below \$1.00 per \$100 valuation to convert existing "copper pennies" currently yielding \$31.95 per penny into Tier 1 pennies, which would generate a higher yield as a result of being tied to the basic allotment. Districts would be limited to converting the number of pennies needed to achieve a compressed tax rate

of \$1.00. Rate conversion would be optional per district discretion in fiscal 2016 and 2017 and would be automatic beginning in fiscal 2018.

Small and mid-size district adjustments. The bill would revise the formulas used to calculate applicable small and mid-size district adjustments. It would reduce the level of application of the mid-size district adjustment to 75 percent of the current basic allotment for the 2015-16 school year. The adjustment would decrease by 5 percent in each subsequent school year until it was phased out.

The bill would specify the amount of basic allotment to which the small district adjustment is applied to be equal to the current basic allotment plus \$125. The bill would not phase out the small district adjustment.

Career and technology. The allotment for each full-time equivalent student in average daily attendance in an approved career and technology education program in grades 9-12 would be expanded to grade 8.

Hold harmless. The bill would repeal provisions that result in a higher equalized wealth level for certain districts based on the district's 1992-93 revenue per student plus the indexed change between the current equalized wealth level and the level established in 1993.

Transitional funding. The bill would entitle districts to receive transitional funding for any amount of M&O revenue lost as a result of the passage of CSHB 1759. The amount of transitional funding could not exceed \$75.7 million for the 2015-16 school year and \$81.2 million for the 2016-17 school years. If the total amount of transitional funding to which districts are entitled exceeds the amount specified, the education commissioner would rank districts and provide funding first to those with the lowest M&O revenue per cent per student in weighted average daily attendance. Transitional funding would expire September 1, 2017.

This bill would take effect September 1, 2015.

SUPPORTERS
SAY:

CSHB 1759 would help to improve the overall funding and equity of the school finance system. The bill, in conjunction with the House-passed version of the general appropriations act, could provide an additional \$3

billion for public schools while ending an ongoing lawsuit.

Cost-of-education adjustment. The bill would simplify school funding laws by eliminating outdated adjustments such as the cost-of-education index. The index was initially designed to help districts adjust for varying economic conditions across the state, based mainly on the size of the district, teacher salaries of neighboring districts, and the percentage of low-income students in 1989-90. The index has not been updated since that time so it does little to help districts that have changed dramatically in the past 25 years. Eliminating the index would free up funding to increase the basic allotment.

Equity. Money saved by ending the cost-of-education index and allotments for transportation, high school, and school support staff could increase the basic allotment from \$5,040 to \$5,888 per student, according to models by the Legislative Budget Board (LBB). Flowing similar or increased levels of funding through the basic allotment in place of the existing structures would move the revenue inside the equalized system of the FSP. This would improve equity among school districts, according to the LBB.

Recapture. The bill also could ease the impact of recapture for some districts, according to LBB. This could benefit large urban districts like Houston and Austin that are property wealthy but also have large populations of economically disadvantaged students who are more expensive to educate. Under the current system, it is difficult for these districts to ask voters for tax increases when a large portion of the revenue collected would be distributed to property-poor districts across the state. If the state put more money into the basic allotment, the amount of recapture required for equalized wealth would decrease.

Fractional funding. The bill would address a problem that dates to 2006 when district tax rates were compressed by one-third. Districts — often in rural areas — that had kept taxes down and whose rates were compressed below \$1.00 per \$100 valuation receive proportionally reduced entitlement under Tier 1. For example, a district with a compressed rate of \$0.90 receives Tier I formula entitlement on the basis of 90 percent of the basic allotment. The bill would provide a means for districts receiving

prorated entitlement to increase Tier 1 participation to \$1.00 per \$100 valuation.

Small and mid-size district adjustment. The bill would continue to recognize that small and mid-size districts face challenges related to economies of scale. For mid-size districts, the bill would use the existing factor but would apply it to only 75 percent of basic allotment and would eventually phase out the adjustment. The adjustment for small districts, some of which are among the state's poorest districts, would be increased and retained.

Transitional funding. Although most districts would receive increased funding under the bill, it includes a provision for transitional funding to ensure that no district would lose money over fiscal 2016-17. This transitional funding would expire September 1, 2017.

Career and technology. Funding career and technology education beginning in 8th grade level would help middle and junior high schools enhance CTE programs.

OPPONENTS
SAY:

CSHB 1759 would increase the funding gap between the highest- and lowest-wealth districts. It would not address funding weights for economically disadvantaged students and English language learners, which was one of the primary concerns of the district court in its 2014 ruling.

The bill by itself would not increase the basic allotment, which would be done through the general appropriations act. The bill would repeal aspects of the funding system without guaranteeing that the savings would actually be rolled into the basic allotment. With no corresponding statutory change to the basic allotment, any increase could be temporary.

Equity. The funding differential between the highest and lowest wealth districts would grow significantly under the bill, according to some analyses. It would be better to change Education Code provisions that could reduce the funding gap such as subjecting local enrichment taxes, known as "golden pennies," to recapture and eliminating all hold harmless.

Educationally disadvantaged. The bill would do little to address the 60 percent of school children who are economically disadvantaged. These children as well as those with limited English proficiency are more expensive to educate. The district judge in the school finance case noted that the state uses outdated “weights” to determine per-student funding that fail to meet the extra costs of educating students who are economically disadvantaged and English language learners. Without determining the appropriate costs to educate these students and updating the weights, the school finance system would not be fair or equitable.

Cost-of-education index. Instead of doing away with the cost-of-education index, the state should update it to reflect current values. Eliminating the index would undermine the ability of certain urban districts to compete with suburban districts for the best teachers.

Mid-size district adjustments. Fixed and uncontrollable costs are higher on a per-student basis for mid-size districts. The adjustment for mid-size districts should be retained at current levels and not phased out.

Transitional funding. The bill would provide for transitional funding so that no district would lose revenue. The transitional funding would be scheduled to expire in 2017 at the same time as target revenue, which could result in certain districts facing an even higher “financial cliff” at that time.

Career and technology. The bill would extend CTE weighted funding to 8th grade students but would leave the weight unchanged. The weight should be increased to provide additional funding for students who want to pursue a career and technology path.

OTHER
OPPONENTS
SAY:

The Legislature should wait until the Texas Supreme Court rules in the pending school finance case before attempting major changes in the funding system. Previous Supreme Court rulings have provided guidance for the state on critical funding issues.

NOTES:

The LBB’s fiscal note estimates the bill would have a negative impact of \$3 billion through fiscal 2017.

SUBJECT: An Article 5 convention for amendments to limit the federal government

COMMITTEE: State and Federal Power and Responsibility, Select — favorable, without amendment

VOTE: 4 ayes — P. King, Workman, C. Anderson, Clardy

3 nays — Miles, Parker, Walle

WITNESSES: For — Jack Galloway, Americans for Integrity in Government; Arthur Bedford, Gary Goff, Paul Hodson, Tom Mast, Efren Molina, Robert Peery, Christopher Rockett, Allen Adkins, Tom Dowdy, Donald Glacy, Allison Tangeman, Martin Harry, Tamara Colbert, Susan Valliant, Wes Whisenhunt, Convention of States Project; Viviano Rodriguez, San Antonio Tea Party; Allen Tharp, San Antonio Tea Party and Convention of States Project; and eight individuals; (*Registered, but did not testify*: Mike Ellerkamp, Convention of States Project; Francine Maness, Joann Juhasz, San Antonio Tea Party; Ray Allen, Shadowsoft/Bruce Stringfellow; Thomas Lindsay, Texas Public Policy Foundation; and eight individuals)

Against — Shirley Spellerberg, Denton County Republican Assembly; Obert Sagebiel, John Birch Society; Davis Ford; Frank Kuchar; Jon Roland; (*Registered, but did not testify*: Kathleen Brown, Central Texas Tea Party; Cindy Barnett, Eric Vining, Denton County Republican Assembly; David Carter, Janice Carter, Norlene Ckudre, Wilma Smith, John Birch Society; Barbara Harless, North Texas Citizens Lobby; Pat Carlson, Texas Eagle Forum; Michael Pacheco, Texas Farm Bureau; Kelly Holt, The New American; Barbara Lamontagne; Richard Snider)

BACKGROUND: Article 5 of the U.S. Constitution requires Congress to call a convention to propose constitutional amendments upon application of the legislatures of two-thirds of the states. Any amendments adopted by an Article 5 convention must be ratified by the legislatures of three-fourths of the states.

The 65th Texas Legislature in 1977 submitted to the federal government

H.C.R. No. 31 requesting that Congress prepare and submit to the several states an amendment to the U.S. Constitution providing for a federal balanced budget, or alternatively requesting that Congress call a constitutional convention for the purpose of proposing such an amendment.

DIGEST: HJR 77 would be an application on behalf of the 84th Legislature to Congress for an Article 5 convention for the limited purpose of proposing amendments to the U.S. Constitution to impose fiscal restraints on the federal government, to limit the power and jurisdiction of the federal government, and to limit the terms of office of federal officials and members of Congress.

Unless rescinded by a succeeding legislature, the application would constitute a continuing application in accordance with Article 5 until at least two-thirds of state legislatures had applied for the limited purpose of proposing one or more amendments to the Constitution to impose fiscal restraints on the federal government, to limit the power and jurisdiction of the federal government, and to limit the terms of office of federal officials and members of Congress.

The Texas secretary of state would be directed to forward official copies of the resolution to the president, speaker of the U.S. House of Representatives, president of the U.S. Senate, and all members of the Texas delegation to Congress with the request that the resolution be officially entered in the Congressional Record. The secretary of state also would be directed to forward official copies of the resolution to the secretaries of state and presiding officers of the other state legislatures.

SUPPORTERS SAY: HJR 79 would be an appropriate and necessary measure to help impose restraints on the federal government. The joint resolution would provide for the 84th Legislature to apply to Congress for an Article 5 convention for the limited purpose of proposing amendments that would impose fiscal restraints, add term limits, and limit the powers and jurisdiction of the federal government. Texas would join many other states that are making the same call.

An Article 5 convention was placed in the Constitution by the Founding

Fathers as a tool for states to limit federal power. Despite decades of urging by citizens and elected officials, administrations and Congresses led by members of both political parties have failed to limit the power of the federal government. This has led to staggering national debt and excessive regulation and overreach by the federal government. It is the duty of state legislatures to protect Americans and future generations by reining in an out of-control federal government and moving power back to state and local governments, which are better positioned to serve the people because they are closer to the people.

The more states that apply for an Article 5 convention over federal budget issues, the more likely Congress is to act. A campaign for a state-led constitutional convention helped persuade Congress to adopt the 17th Amendment, which established the election of U.S. senators by the people.

Fears of a runaway convention are overstated. HJR 77 would limit the Article 5 convention to three specific areas, and delegates to a convention could not deviate from those areas. Additionally, the Texas House on May 6 passed HB 1110 by P. King, which would establish a process for selecting delegates to an Article 5 convention. That bill would guard against the possibility of a wide-open convention by banning Texas delegates from voting on any issue outside the scope of application from Texas. Any delegate who cast an unauthorized vote would find that vote invalidated and their status as a delegate revoked.

A further check on the power of a convention would be the ratification process itself. Because a constitutional amendment would have to be ratified by three-fourths of the states, the states would retain the power to approve any amendment that came out of the convention. It would take only 13 states to stop an unwise or unpopular amendment.

**OPPONENTS
SAY:**

HJR 77 would be a dangerous and unnecessary way to address federal overspending. Despite the desires of the Texas Legislature to propose one or more amendments to limit federal power, spending, and jurisdiction, an Article 5 convention has the potential to rewrite the Constitution and strip citizens of some of their most cherished rights. Conservative states would not be the only voice in a constitutional convention; liberal states also

would participate and could have a vastly different agenda for changing the Constitution. Texans who want to limit the powers of the federal government should focus on electing leaders who would work to impose fiscal restraints and term limits and to restrain federal power and jurisdiction.

A convention under the resolution could be too broad in its focus. The three areas that would be addressed — imposing fiscal restraints on the federal government, limiting the power and jurisdiction of the federal government, and limiting the terms of office of federal officials and members of Congress — could be broadly construed to amend the Constitution in ways not envisioned by this resolution. An application for a convention under Article 5 should delineate specific, carefully crafted proposals for amendments that could be adopted by the convention.

HB 1110 would seek to establish the selection and duties of Texas delegates to a constitutional convention, but that control could not be guaranteed. Congress would be in control of calling the convention and Congress could set the agenda and rules. Congress could decide how many delegates would come from each state and how they would be selected.

SUBJECT: Proposing a constitutional amendment to increase the minimum wage

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 4 ayes — Oliveira, Collier, Romero, Villalba

3 nays — Simmons, Fletcher, Rinaldi

WITNESSES: For — Garrett Groves, Center for Public Policy Priorities; Chuck Freeman, Free Souls Church/TX Unitarian Universalist Justice Ministry; Rene Lara, Texas AFL-CIO; Maxie Gallardo, Workers Defense Project; and five individuals; (*Registered, but did not testify*: Joe Hamill, American Federation of State, County, and Municipal Employees; Nancy Williams, City of Austin; Currie Hallford, CWA/TPLC Texas Legislative and Political Committee; Christopher Willett, Equal Justice Center; Will Francis, National Association of Social Workers - Texas Chapter; Phillip Martin, Progress Texas; Leonard Aguilar, Southwest Pipe Trades Association; Josette Saxton, Texans Care for Children; Ted Melina Raab, Texas American Federation of Teachers; Michael Cunningham, Texas Building and Construction Trades Council; Emmanuel Garcia, Texas Democratic Party; Harrison Hiner, Texas State Employees Union; Denee Booker; Michael Gutierrez; Jason Lopez; Karen Trietsch)

Against — Sid Rich, TARC; (*Registered, but did not testify*: Jon Fisher, Associated Builders and Contractors of Texas; Matt Long, Fredericksburg Tea Party; Annie Spilman, National Federation of Independent Business/TX; Cathy Dewitt, Texas Association of Business; Kathy Williams, Texas Association of Staffing; Pat Carlson, Texas Eagle Forum; Micahael Pacheco, Texas Farm Bureau; Matt Burgin, Texas Food and Fuel Association; Justin Bragiel, Texas Hotel and Lodging Association; Kenneth Besserman, Texas Restaurant Association; Ronnie Volkening, Texas Retailers Association; Angela Smith)

BACKGROUND: The Texas Minimum Wage Act, under Labor Code, ch. 62, adopts the federal minimum wage, which was increased to \$7.25 per hour under the Fair Labor Standards Act in 2009.

DIGEST: HJR 26 would amend Texas Constitution, Art. 16, sec. 29 to require an employer to pay an employee the greater of \$10.10 per hour or the federal minimum wage.

This requirement would not apply to wages paid to patients and clients of certain state health services in compensation for assisting in facility operations or for occupational training. The requirement also would not apply to employers who were exempt under Labor Code, ch. 62, subch. D, including certain religious and nonprofit employers. The Legislature could repeal or limit these exemptions but could not expand them.

The proposal would be presented to the voters at an election on Tuesday, November 3, 2015. The ballot proposal would read: “The constitutional amendment establishing a minimum wage of the greater of \$10.10 an hour or the federal minimum wage.”

SUPPORTERS SAY: HJR 26, along with its enabling legislation, HB 41 by Martinez Fischer, would benefit the economy and the quality of life for workers in Texas by increasing the minimum wage to \$10.10 per hour. The wages for other employees likely would increase as a result, which would improve the consumer purchasing power of Texans. This would benefit businesses and the economy because people would have more money to spend. It also would result in a decline in the need for public assistance, allowing state funds to be used in other areas.

Contrary to some views, the minimum wage would have no discernible effect on employment. In fact, some businesses believe it would benefit them because there would be lower employee turnover and increased productivity. The free market system should not be tasked with determining the minimum wage because a business's first priority is to make money, not to pay people a fair wage.

No Texan working full time should live in poverty. The minimum wage has not been raised since 2009, despite the increased cost of living and household items. The result of this disparity is a lower quality of life for many people. The myth that the minimum wage is earned only by teenagers working part-time jobs for extra spending money is not true. The majority of people earning a minimum wage are at least 20 years old,

many of whom are working full-time jobs and supporting a family.

HJR 26 would give Texans the opportunity to vote on increasing the minimum wage because the people deserve the right to decide for themselves about an issue that affects so many of them.

OPPONENTS
SAY:

HJR 26 would hurt businesses and the economy and, as a result, would not help individuals. The free market, rather than the government, should decide wages, with individuals being allowed to contract out their labor at whatever rate they choose, assuming they can find a willing buyer. This proposal would mandate that businesses pay their workers above a certain level, regardless of whether the business could afford to pay that amount.

Increasing the minimum wage would result in the loss of jobs and opportunities because many businesses would be forced to fire employees, decrease benefits, or offer fewer hours. If the minimum wage were increased, employees already making more than minimum wage might also demand an increase in wages, increasing the cost of labor for all employees.

A minimum wage creates a false bottom because as other wages increase, the cost of goods and services also increase. This ultimately places the person earning minimum wage in the exact position in which they started.

HJR 26 is also unnecessary because the majority of people earning minimum wage are young people starting in entry-level positions. Increasing the minimum wage would serve only to eliminate these positions, along with opportunities for the young work force to gain experience and training, because businesses likely would choose to hire more experienced candidates if they already were paying the higher wage.

NOTES:

The Legislative Budget Board's fiscal note indicates that the fiscal implications are indeterminate but estimates that the cost could range from \$595 million to \$655 million in general revenue funds through fiscal 2016-17.

HB 41 by Martinez Fischer, the enabling legislation for HJR 26, would increase the minimum wage under the Texas Minimum Wage Act to the

greater of \$10.10 per hour or the federal minimum wage. It was left pending in the House Committee on Business and Industry on April 7.

SB 67 by Ellis, the Senate companion to HB 41, was referred to the Senate Committee on Natural Resources and Economic Development on January 26.